

Feb 03, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON JOSEPH CUNNINGHAM,

Plaintiff,

v.

SPOKANE COUNTY JAIL
OFFICIALS, STAFF, SHERIFFS, and
JUDICIAL OFFICERS and
WASHINGTON STATE OFFICIALS,

Defendants.

No. 2:19-cv-00301-SMJ

ORDER DISMISSING ACTION

1915(g)

Before the Court is Plaintiff Aaron Joseph Cunningham's First Amended Complaint, ECF No. 19. On December 10, 2019, Plaintiff presented a supplement to this First Amended Complaint (*i.e.*, a re-submission of the last three pages of the First Amended Complaint form adding "Count III" and asserting a violation of his right under the Thirteenth Amendment right), ECF No. 21. Because Plaintiff is proceeding *pro se*, the Court has reviewed these documents together as the First Amended Complaint.

In addition, on December 10, 2019, Plaintiff filed a document titled "Order of Opposition," ECF No. 22, which the Court liberally construes as a Motion for

1 Reconsideration of the Order Denying Motions for Temporary Restraining Order,
2 Preliminary Injunction, and Appointment of Counsel, ECF No. 20, and the Order
3 Denying Construed Motion for Summary Judgment, ECF No. 17. On December 30,
4 2019, Plaintiff filed a document titled, “Second Order to Show Cause for a[]
5 Preliminary Injunction & a Temporary Restraining Order,” which the Court
6 construes as a second Motion for Injunctive Relief, ECF No. 23. Plaintiff, a prisoner
7 at Spokane County Detention Services, is proceeding *pro se* and *in forma pauperis*.
8 Defendants have not been served.

9 As a general rule, an amended complaint supersedes the original complaint
10 and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927
11 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint
12 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814
13 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,
14 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (holding any
15 claims voluntarily dismissed are considered to be waived if not repleaded).
16 Liberally construing the First Amended Complaint in the light most favorable to
17 Plaintiff, the Court finds that it does not cure the deficiencies of the initial complaint
18 and fails to state a claim upon which relief may be granted.

19 Plaintiff’s conclusory assertions of Fourteenth, Eighth, and Thirteenth
20 Amendment violations, without any supporting factual allegations, do not state a

1 plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007).

3 Plaintiff was given notice of the defects and the opportunity to amend his
4 claims and he was unable to do so, making clear that further leave to amend is futile.
5 Therefore, **IT IS ORDERED** this action is **DISMISSED WITH PREJUDICE** for
6 failure to state a claim upon which relief may be granted under 28 U.S.C.
7 §§ 1915(e)(2) and 1915A(b)(1). **IT IS FURTHER ORDERED** that all pending
8 motions are **DENIED AS MOOT**.

9 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
10 brings three or more civil actions or appeals that are dismissed as frivolous,
11 malicious, or for failure to state a claim will be precluded from bringing any other
12 civil action or appeal *in forma pauperis* “unless the prisoner is under imminent
13 danger of serious physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read**
14 **the statutory provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s**
15 **complaint may count as one of the three dismissals allowed by 28 U.S.C.**
16 **§ 1915(g) and may adversely affect his ability to file future claims.**

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IT IS SO ORDERED. The Clerk's Office is directed to enter this Order, enter judgment, provide copies to *pro se* Plaintiff at his last known address, and **CLOSE** the file. The Clerk's Office is further directed to provide a copy of this Order to the Washington State Office of the Attorney General, Corrections Division. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact.

DATED this 3rd day of February 2020.


SALVADOR MENDOZA, JR.
United States District Judge